

107.090 Third ordinance -- Purpose -- Adoption.

- (1) Upon compliance with KRS 107.080 the governing body may adopt an ordinance, hereinafter referred to as the "Third Ordinance":
 - (a) Finally authorizing the issuance of bonds of the city which shall be designated "Improvement Assessment Bonds" and shall, in addition, identify the project by name of streets, number, or otherwise;
 - (b) Determining the principal amount thereof;
 - (c) Establishing the denominations and maturity dates thereof, which may be term or serial maturities, not to exceed thirty (30) years from date of issue;
 - (d) Levying an annual assessment effective only upon the benefited properties, according to their respective assessed values as determined for the purposes of general city taxation, but without regard to any constitutional or other limits otherwise applicable to taxation for general city purposes, the annual rate of such improvement assessment to be fixed when city taxes are levied, and to be sufficient in each year to provide for the payment of such bonds and interest coupons as they mature; and, in the case of the first such levy, sufficient to provide, in addition, a sum equal to twenty percent (20%) of average annual principal and interest requirements, the same to constitute a "debt service reserve" as a precaution against possible default by reason of failures in the collection of the annual levies, as hereinafter provided;
 - (e) Covenanting with the holders of said bonds and coupons, that until the payment in full thereof the city will levy annually an improvement assessment upon the benefited properties only, as provided in the foregoing subsection (d) hereof;
 - (f) Covenanting with the holders of said bonds and coupons, that until payment in full thereof, the city will pursue and exhaust, at the city's expense, all remedies available to the city and for the benefit and protection of the bondholders, including enforcement to judgment and decretal sale of the liens upon benefited properties, as provided in this chapter;
 - (g) Designating one (1) or more places of payment of principal and interest, within or without the Commonwealth;
 - (h) Specifying, or omitting, provisions for redemption and payment prior to stated maturities, and the terms thereof;
 - (i) Providing for the payment by the city of any and all reasonable and customary charges for the services of paying agents, to the end that the holders of the bonds and coupons will receive the sums therein stipulated, without deductions for such charges; and
 - (j) Any other provisions not contrary to law.
- (2) Following compliance with the foregoing provisions of KRS Chapter 107 for a wastewater collection project undertaken by a metropolitan sewer district, the board of the district may adopt a third ordinance which shall make those provisions set forth in this subsection.

- (a) The third ordinance shall determine and confirm:
 - 1. The nature and scope of a project;
 - 2. The real properties to be benefited, which shall be all benefited properties identified in the first ordinance and the second ordinance, excepting properties for which lump-sum payment of improvement benefit assessment levies had been made within the statutory period;
 - 3. The exact method of assessment of the benefited properties; and
 - 4. The costs of the project;
- (b) The third ordinance shall authorize the issuance of bonds of the district periodically. The bonds shall be designated "improvement lien bonds" and shall additionally identify the project by reference to its name or title;
- (c) The third ordinance shall determine the principal amount of the bond issue, subject to the provisions of KRS 107.210;
- (d) The third ordinance shall establish the denominations and maturity dates of the bonds. The bonds may be term or serial maturities not to exceed thirty (30) years from the date of issue, and may provide for the issuance of the bonds in series, each such series to be equally secured without preference as to bondholders by improvement benefit assessments levied on all benefited properties and by liens in respect thereto;
- (e) The third ordinance shall levy an annual improvement benefit assessment on the benefited properties, for which lump-sum payments were not made, pursuant to the assessed value basis according to either:
 - 1. Their respective assessed land values as determined for purposes of general ad valorem taxation; or
 - 2. Upon a basis of equality by zones, pursuant to findings of fact by the board that benefited properties in particular zone classifications are to be treated equally for assessment purposes because of substantial equality of benefits conferred.

The assessments may be made without regard to any constitutional or other limits otherwise applicable to taxation for general ad valorem purposes. The annual rate of the improvement assessment shall be fixed when regular county ad valorem taxes are levied and shall be sufficient in each year to provide for the payment of the bonds and interest coupons as they mature. In each year, until accrual of the debt service reserve requirement, the annual rate shall be sufficiently large to provide an additional sum equal to twenty percent (20%) of maximum principal and interest requirement, which additional sum shall constitute a debt service reserve fund as a precaution against possible default by reason of failures in the collection of the annual levies; provided, however, that if the district shall have provided by the third ordinance that the debt service reserve requirement be financed from bond proceeds as one of the costs of the project, the additional annual benefit assessment shall be omitted, but additional levies shall promptly be instituted at any time necessary to maintain the debt service reserve requirement at its prescribed level;

- (f) The third ordinance shall covenant with the holders of the bonds and coupons that until their payment in full, the district shall levy annually an improvement benefit assessment upon each and every benefited property, as provided in subsection (2)(e) of this section; provided, however, the district may provide by order that certain benefited properties be omitted from assessment during initial periods not to exceed three (3) years because of construction scheduling;
 - (g) The third ordinance shall covenant with the holders of the bonds and coupons that until payment in full, the district shall pursue and exhaust at the district's expense all remedies available to the district for the benefit and protection of the bondholders. These remedies include both termination of water service to delinquent real properties and enforcement to judgment and sale of the liens upon benefited properties which are granted by this chapter;
 - (h) The third ordinance shall designate one or more places of payment of principal and interest within or without the Commonwealth;
 - (i) The third ordinance shall specify or omit provisions for redemption and payment prior to stated maturities and the terms thereof;
 - (j) The third ordinance shall provide for the payment by the district of all reasonable and customary charges for the services of trustees and paying agents to the end that the holders of the bonds and coupons will receive the sums stipulated without deduction for such charges; and
 - (k) The third ordinance may contain any other provisions not contrary to law. The district is expressly empowered to finance any particular project by an issue of bonds which may be sold and delivered in one or more series. Each series shall be equally and indistinguishably secured, as provided in KRS Chapters 76 and 107, by improvement benefit assessments levied upon all benefited properties and by liens granted for the security of bondholders by KRS Chapters 76 and 107 on benefited properties. The assessments and liens shall apply to each benefited property and in favor of each bond of each series whenever issued.
- (3) In the discretion of the board of a metropolitan sewer district relating to a wastewater collection project, any improvement lien bonds or bond anticipation notes issued under KRS Chapters 76 and 107 may be secured by a trust indenture between the district and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth of Kentucky. The trust indenture may pledge or assign for the security of the improvement lien bonds or notes all or any part of the proceeds of improvement benefit assessments received by the district. The trust indenture shall contain any provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable, proper and not in violation of law, including:
- (a) Covenants setting forth the duties of the district in relation to the purposes to which improvement lien bond proceeds may be applied;
 - (b) The disposition and pledging of receipts of improvement benefit assessments; and

- (c) The custody, safeguarding and application of all improvement benefit assessment revenues. It shall be lawful for any Kentucky bank or trust company acting as depository of the proceeds of bonds, notes or district revenues, to furnish indemnity bonds or to pledge securities as required by the trust indenture of the district. Any trust indenture may set forth the rights and remedies of the bondholders and indenture trustee and it may restrict the individual right of action by bondholders. In addition, any trust indenture may contain such other provisions as the district may determine to be reasonable for the further security of the holders of the bonds. All expenses of the trust indenture shall be treated as a part of the costs of the project and shall be paid from either the proceeds of the bonds or improvement benefit assessments.
- (4) All bonds issued by metropolitan sewer districts under the provisions of KRS Chapters 76 and 107 shall possess all of the qualities and incidences of negotiable instruments under the laws of Kentucky. The bonds may be issued in coupon or in registered form or in both. Provision also may be made for the registration of any coupon bonds as to principal only and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The district shall sell the bonds at public sale at a price that will best effect the purposes of KRS Chapters 76 and 107.
- (5) Any metropolitan sewer district initiating a wastewater collection project pursuant to KRS Chapters 76 and 107 shall have and possess all powers and the authority set forth in KRS 58.150.
- (6) No benefit assessment bonds shall be sold without competitive bidding.

History: Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 13, sec. 16. -- Amended 1970 Ky. Acts ch. 92, sec. 23. -- Created 1956 Ky. Acts ch. 239, sec. 9.